

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FREEMAN D. NATION,)	
)	
Plaintiff,)	
)	
v.)	NO. 3:07-1007
)	Judge Trauger/Bryant
DAVIDSON COUNTY SHERIFF'S)	
OFFICE, et al.,)	
)	
Defendants.)	

TO: The Honorable Aleta A. Trauger

REPORT AND RECOMMENDATION

Pending is the motion to dismiss filed on behalf of defendant Tennessee Department of Corrections. (Docket Entry No. 6). As grounds for this motion, defendant asserts (1) that the State of Tennessee and its agencies sued for money damages are not "persons" for purposes of 42 U.S.C. § 1983, (2) that the Eleventh Amendment bars suits for money damages against the State, and (3) that the plaintiff's complaint fails to state a claim because he has failed to exhaust his administrative remedies.

Plaintiff has filed no response in opposition to this motion.

This motion has been referred to the undersigned Magistrate Judge for report and recommendation. (Docket Entry No. 2).

On January 10, 2008, the undersigned Magistrate Judge entered an order to show cause requiring the plaintiff to show cause on or before January 22, 2008, why the Tennessee Department of Corrections' motion to dismiss should not be granted. (Docket

Entry No. 8). Despite this order to show cause, plaintiff has failed to respond.

From the foregoing facts which appear in this record, the undersigned Magistrate Judge finds that plaintiff has failed to comply with an order to show cause, and has failed to prosecute this action, despite a passage of considerable time, and, therefore that the plaintiff's complaint should be dismissed without prejudice.

RECOMMENDATION

For the foregoing reasons, the undersigned Magistrate Judge hereby **RECOMMENDS** that plaintiff's complaint be **DISMISSED** without prejudice for his failure to prosecute and failure to comply with the Court's previous order to show cause.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from service of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986).

ENTERED this 27th day of May 2008.

s/ John S. Bryant
JOHN S. BRYANT
United States Magistrate Judge